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11 Attorneys for Defendant  
 NETFLIX, INC.

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN FRANCISCO DIVISION

15 BROADCOM CORPORATION, et al.,  
 16 Plaintiffs,  
 17 v.  
 18 NETFLIX, INC.,  
 19 Defendant.

Case No. 3:20-cv-04677-JD

**DEFENDANT NETFLIX, INC.'S NOTICE  
 AND MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF ITS  
 MOTION TO DISMISS**

Date: June 23, 2022  
 Time: 10:00 a.m.  
 Dept.: Courtroom 11, 19th Floor  
 Judge: Honorable James Donato

Date Filed: March 13, 2020  
 Trial Date: None Set

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3 *PersonalWeb Techs LLC v. Google LLC*,  
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5 *Rothschild Digital Confirmation, LLC v. Skedulo Holdings Inc.*,  
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7 *Simio, LLC v. FlexSim Software Prod., Inc.*,  
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9 *In re TLI Commc’ns LLC Pat. Litig.*,  
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15 *Yu v. Apple Inc.*,  
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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on June 23, 2022 at 10:00 a.m. in Courtroom 11, 19th  
4 Floor, 450 Golden Gate Avenue, San Francisco, California, before the Honorable James Donato,  
5 Defendant Netflix, Inc. (“Netflix”) will and hereby does move, pursuant to Rule 12(b)(6) of the  
6 Rules of Civil Procedure, for an order dismissing the Twelfth Claim of Plaintiffs Broadcom and  
7 Avago Technologies International Pte. Limited’s (“Broadcom’s”) Third Amended Complaint  
8 with prejudice. This motion is based upon this Notice; the following Memorandum of Points and  
9 Authorities; the complete files and records in this action; the argument of counsel; and such other  
10 matters as the Court may consider.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 A patent’s eligibility under 35 U.S.C. § 101 must be supported by something other than  
14 the patent owner’s say so. But that support is missing from Broadcom’s Third Amended  
15 Complaint, which reflects its third attempt to salvage the asserted claims of U.S. Patent No.  
16 8,365,183 (the “’183 patent”). On April 13, 2022, the Court found those claims unpatentable  
17 under Section 101 and dismissed Broadcom’s Twelfth Claim without prejudice. *See* Dkt. 205  
18 (hereinafter, “Order”). In doing so, the Court cautioned that “[i]n light of the plain language of  
19 the claims in the patent, the Court has some doubt that Broadcom can amend around this  
20 problem.” Order at 9. That doubt was well-founded. Broadcom’s Third Amended Complaint re-  
21 asserts the previously-dismissed ’183 patent and includes new allegations apparently designed to  
22 overcome another Section 101 dismissal. But the new allegations fail to transform the claimed  
23 invention into patent-eligible subject matter. Nor do they give rise to a factual dispute that makes  
24 resolution on the pleadings inappropriate.

25 In fact, Broadcom’s new allegations do nothing to respond to the Court’s prior analysis.  
26 Broadcom’s new allegations purport to rebrand the ’183 patent’s invention as the “Funnel  
27 Approach”—a “specific technique” for allocating jobs to computers in a system—and adopt a  
28 new claim construction. But these are virtually the same arguments Broadcom made against

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